

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M.B.

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011120335

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino California on February 21, 2012.

The Inland Regional Center (agency) was represented by Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs.

Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on February 21, 2012.

ISSUE

Is claimant eligible for agency services under the diagnosis of having a condition similar to mental retardation that requires treatment similar to that required by an individual with mental retardation (5th category)?

FACTUAL FINDINGS

1. Claimant is 15 years old.
2. Claimant applied for agency services on July 14, 2010.

3. On September 15, 2010, the agency conducted a psychological assessment of claimant to determine if he qualified for services under the criterion of “intellectual disability-mental retardation.” Agency psychologist Paul Greenwald administered the Wechsler Intelligence Scale for Children-4th Edition (WISC-IV), the Children’s Autism Rating Scale (CARS), and the Vineland-II Adaptive Behavior Scale. Additionally, Dr. Greenwald reviewed claimant’s school district records, including his past results from a WISC-IV that claimant completed on September 24, 2008.

4. As a result of the September 15, 2010, records review and psychological testing Dr. Greenwald authored a report, in which he sets forth the following observations:

“[M.B.] was referred for Inland Regional Center (IRC) psychological assessment to determine eligibility for services under criterion of intellectual disability-mental retardation. [M.B.] incurred a metastatic occipital brain tumor diagnosed in April 2005 and underwent surgery at Loma Linda Hospital removing the tumor in May of that year. Chemo and radiation therapies were rendered as an outpatient. Surgery rendered [M.B.] severely visually impaired and moderately hearing impaired. He sustained nausea, headaches and seizures due to fluid buildup. Last seizure reportedly occurred in May, 2010. Bilateral hearing aids have restored some function but [M.B.] has lost all vision.

[M.B.] received Head Start services at age four. He attended regular preschool kindergarten through third grade. [M.B.] received hospital and home-based schooling beginning from 2006-07. [M.B.] entered a program for visually impaired students in 2007. He had received physical and occupational therapy services from Loma Linda Itinerant Services from 2005-06 and received County itinerant physical therapy services in 2007. [M.B.] receives West End Counseling Center services in Ontario. He has also benefitted from services provided by the Braille Institute.” (Exh. 12)

5. Claimant’s scores on the WISC-IV, administered by Dr. Greenwald on September 15, 2010, were as follows: Verbal Comprehension Index = 96; Working Memory Index = 88. These scores were consistent with the scores claimant obtained on the WISC-IV which was administered on September 24, 2008. Those scores were as follows: Verbal Comprehension Index = 89; Working Memory Index = 91. Dr. Greenwald testified that claimant’s scores on the Verbal Comprehension Index subtests were “all in the average range,” as was one of the two subtests in the Working Memory Index. The second Working Memory Index subtest was in the “lower average range.” Dr. Greenwald arrived at the following conclusions:

“[M.B.]’s WISC-IV result reveals fully Average range functioning for primary intellective (Verbal Comprehension) ability, and Low

Average to Average range Working Memory. This is consistent with September, 2008 results. Adaptive functions are assessed at levels significantly lower than cognitive ability as a result of acquired profound sensory (visual and, to a lesser extent, hearing) deficit[s]. Significant scatter or inconsistencies among adaptive functions are not indicative of intellectual disability or functional equivalent.

* * *

“[M.B.] [is] not eligible for IRC services under diagnostic criterion of Intellectual Disability- mental retardation . . .” (Exh. 12)

6. Dr. Greenwald testified in conformity with his report and made it clear that claimant does not have a substantial handicap as a result of mental retardation or a disabling condition closely related to mental retardation or one that requires treatment similar to that required for individuals with mental retardation.

7. The agency notified claimant of its determination that he did not qualify for Lanterman Act services, claimant timely appealed from the agency’s denial of his request for services, and the instant hearing ensued.

8. Claimant’s mother (mother) testified that she believes claimant should receive agency services because, notwithstanding the test results, and expert opinions concerning claimant, claimant exhibits “different things [behaviors] at home” According to mother, when claimant does his school homework, “someone must sit with him and remind him constantly to do them.” Mother has become frustrated with the school district’s perceived failure(s) to provide claimant with a Free and Appropriate Public Education (FAPE) and is looking for services from other agencies.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4512 defines a “Developmental Disability” as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely. . .” California Code of Regulations, title 17, section 54000 further defines “Developmental Disability” as follows:

“(a) ‘Developmental Disability’ means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

“(b) The Developmental Disability shall

“(1) Originate before age eighteen . . .

* * *

“(c) Developmental Disability shall not include handicapping conditions that are:

“(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

“(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

“(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

2. The facts, considered as a whole, reveal that claimant does not have a qualifying “Developmental Disability.” The burden rests on claimant to establish that he suffers from a qualifying “Developmental Disability” and, in this case, claimant failed to establish his eligibility by a preponderance of the evidence. (See Evid. Code, § 115.)

ORDER

The agency's conclusion that claimant is not eligible for agency services is upheld.

DATED: February 27, 2012.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.